IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-1558

RICHARD BECK,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for Writ of Certiorari to the Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

In its Memorandum in Opposition, the United States raises the issue of Petitioner's standing to object to an admittedly unconstitutional search and seizure.[1]

1. An essential issue at trial was the identification of Petitioner as the assistant of Lester Henry Mueller (Tr. Vol IX, pp. 1066-1069).[2] It was the Government's theory that Petitioner

[1] It should be noted that the United States has filed no timely brief in opposition pursuant to the requirements of Rule 24 (1).

[2] "Tr." refers to the trial transcript.

and Lester Mueller shared a common "business" interest in the automobile and its contents. This is evident from the use made of the personal effects seized from the Thunderbird automobile in the prosecution's attempts to forge its chain of circumstantial proof. (Tr. 460-477; Sup. Tr. 28-36).[3] It was asserted in the District Court that Petitioner had at minimum, a possessory interest in the automobile.[4] The Government cannot be now heard to say that the search and seizure were not direct against the Petitioner. As this Court said in *Jones v. United States*, 362 U.S. 257, 261:

> "In order to qualify as a 'person aggrieved by an unlawful search and seizure' one must have been a victim of a search or seizure, *one against whom the search was directed*, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else. Rule 41 (e) applies the general principle that a party will not be heard to claim a constitutional protection, unless he belongs to the class for whose sake the constitutional protection is given." (citations). The restrictions upon search and seizures *were* obviously designed for the protection against official invasion of privacy and the security of property." (Emphasis added)

A more recent discussion by this Court on the question of standing was in *United States v. Calandra*, 414 U.S. 338, 347 wherein it was decided that a grand jury witness had standing though the evidence may be used against someone else.

> "Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of il-

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[3] "Sup. Tr." refers to the Supplemental Trial Transcript containing the arguments of counsel.

[4] Note that *Brown v. United States*, 411 U.S. 223, involved a store not an automobile. However see, *United States v. Medina-Flores*, 477 F.2d 225 (C. A. 10); *United States v. Mulligan*, 488 F. 2d 732 (C.A. 9).

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> legally seized evidence in all proceedings or against all persons. As with any remedial device, the application of the rule has been restricted to those areas where it remedial objectives are thought most officaciously served. The balancing process implicit in this approach is expressed in the contours of the standing requirement. Thus, standing to invoke the exclusionary rule has been confined to situations where the Government seeks to use such evidence to incriminate the victim of the unlawful search (Citations omitted). This standing rule is premised on a recognition that the need for deterrence and hence the rationale for excluding the evidence are strongest where the Governments unlawful conduct would result in imposition of a criminal sanction on the victim of the search."

Petitioner clearly has standing if for no other reason than that the United States conceded it by its proof and theory at trial.

2. With standing established the conflicting principles enunciated variously by the circuits require reconciliation and clarification. The instant case is the appropriate vehicle to service that requirement, in that it is part of that controversy as it currently exists. *United States v. Bradshaw*, 515 F.2d 360, presents only the most glaring example of the conflict. The need and importance of eliminating expeditiously the resultant inequities, present and future, generated by the conflict makes it appropriate for this Court to utilize the vehicle at hand to speed to a resolution.

Certiorari, therefore, should be granted.

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September, 1975

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